

## PROPOSED DECISION

Agenda ID #14773 (Rev. 1)  
Ratesetting  
5/12/2016 Item #7

Decision **PROPOSED DECISION OF ALJ MILES** (Mailed 3/30/2016)

### BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by Sierra Telephone Company, Inc. (U1016C), Sierra Telephone Long Distance (U5657C), and Mr. John H. Baker for approval of the transfer of control of Sierra Telephone Company, Inc. (U1016C) and Sierra Telephone Long Distance (U5657C) to Mr. John H. Baker pursuant to Public Utilities Code Section 854(a).

Application 15-12-017  
(Filed December 23, 2015)

### **DECISION GRANTING APPLICANT'S REQUEST APPROVING THE TRANSFER OF CONTROL OF SIERRA TELEPHONE COMPANY AND SIERRA TELEPHONE LONG DISTANCE TO SUCCESSOR TRUSTEE JOHN H. BAKER**

#### **Summary**

Sierra Telephone Company, Inc. (U1016C), Sierra Telephone Long Distance (U5657C) and John H. Baker (collectively "Applicants") seek retroactive authorization for Baker's appointment in January 2015 as the successor trustee of two trusts. Additionally, authority is sought to transfer control of the stock held by the trusts to Baker individually (at an unspecified future date).

This decision approves Mr. Baker's prior appointment as trustee, but also imposes a penalty for the parties' failure to initiate a request for authorization in advance of the transfer of control as required by California Public Utilities Code Section 854(a).

We deny prospective approval for the anticipated subsequent transfer of control of the stock now held by the trusts, to John H. Baker individually, due to lack of certainty and details concerning the proposed subsequent transfer.

The proceeding is closed.

## **1. Background**

Sierra Telephone Company, Inc. (U1016C) and Sierra Telephone Long Distance (U5657C) are wholly-owned subsidiaries of Sierra Tel Communications Group (STCG). The voting stock of STCG is held in three trusts as follows: 49% held by the Harry H. Baker, Jr. 1975 Trust, 49% held by the Harry H. Baker Revocable Trust (2003) and 2% held by the John H. Baker 1999 revocable inter vivos trust. Harry H. Baker was the sole trustee of the two trusts bearing his name. The application states that, due to serious illness, Harry H. Baker resigned as trustee on January 12, 2015 and named John H. Baker successor trustee.<sup>1</sup> Harry H. Baker died on April 3, 2015. John H. Baker (John Baker) is currently the sole trustee of all three trusts. In this application, John Baker also seeks authority for distribution of STCG voting stock held by the trusts to himself individually, or as trustee of the John H. Baker 1999 revocable inter vivos trust.<sup>2</sup>

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<sup>1</sup> See Application at 2. According to the application, naming John H. Baker did not require any financial transaction or transfer of stock, only execution of a succession of trustee. The application admits that prior Commission authorization for the transfer of control as a result of the transfer from Harry H. Baker to John Baker was not obtained. However, there is no explanation why prior authorization was not obtained.

<sup>2</sup> The Application indicates that there is "potential for the future acquisition of control ... by John Baker, individually, which would occur, if at all, upon distribution of the STCG voting stock currently held by John Baker as trustee of the 2003 Harry H. Baker Revocable Trust to Mr. Baker individually." See Application at 2.

**2. The Telephone Companies**

Sierra Telephone Company, Inc.<sup>3</sup> is a corporation organized under the laws of California, doing business as a small incumbent local exchange carrier serving approximately 19,000 telephone subscriber access lines in portions of Mariposa and Madera Counties. Its property consists of telephone facilities, including central office equipment, aerial and buried cable, land and buildings.

Sierra Telephone Long Distance<sup>4</sup> is a non-dominant interexchange carrier which provides intrastate, interstate and international long distance service as a non-facilities based reseller in and around the area served by Sierra Telephone Company, Inc.

Each of the companies holds a certificate of public convenience and necessity (CPCN) issued by the Commission.

**3. Standard for Approval of a Transfer of Control under Section 854**

California Public Utilities Code Section 854(a) requires the Commission's approval prior to the transfer of control of a public utility subject to its jurisdiction. Section 854(a)<sup>5</sup> provides:

854(a) No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so

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<sup>3</sup> Sierra Telephone Company Inc. is a General Rate Case Incumbent Local Exchange Carrier of last resort. The business address of Sierra Telephone Company Inc. is P.O. Box 219, 49150 Crane Valley Road (Road 426), Oakhurst, California 93644. The telephone number is (559) 683-4611. Application at 4-6.

<sup>4</sup> The business address of Sierra Telephone Long Distance is P.O. Box 1505, 49150 Crane Valley Road (Road 426), Oakhurst, California 93644. Sierra Telephone Long Distance is a wholly owned/majority owned affiliate of Sierra Telephone. The telephone number is (559) 683-4611. Application at 4-6.

<sup>5</sup> All future references to sections are to the Pub. Util. Code.

from the commission. The commission may establish by order or rule the definitions of what constitute merger, acquisition, or control activities which are subject to this section. Any merger, acquisition, or control without that prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this state, and no subsidiary or affiliate of, or corporation holding a controlling interest in a public utility, shall aid or abet any violation of this section.

### **3.1. Public Interest in Approving the Transfer of Control**

The public interest will be served by the approval of this Application. The leadership of Sierra Telephone Company, Inc. and Sierra Telephone Long Distance are unchanged as a result of Mr. John Baker's appointment as successor trustee. Mr. Baker has served as vice president of Sierra Telephone Company since 1982 and as vice president of Sierra Telephone Long Distance since 1998. By virtue of his management of the companies, Mr. Baker has demonstrated management experience within the telecommunications field. Because Mr. Baker will continue to be responsible for the day-to-day management of the companies, it is clear that the transfer of control will not have an adverse impact upon the management of the companies.

### **3.2. Financial Qualifications**

When evaluating financial qualifications, the Commission will consider whether the carrier's day-to-day operations will be adversely affected or whether customers will receive the same services after the transfer of control. The Commission will also consider whether the carrier will have continued access to adequate financial resources and will retain the assets needed to operate after the

transfer. Documentation must indicate that the entity to whom control is transferred, meets the requirements for issuance of a CPCN.<sup>6</sup>

In this proceeding, the transfer of control sought does not involve any financial transaction or stock transfer. The transfer of control involves only the succession of John Baker to become sole trustee for each of the trusts.<sup>7</sup> Because the transfer of control does not involve transfer of any assets of either of the companies, we agree that there is no detrimental financial impact on either company's CPCN qualification as a result of the change of trustee. Unaudited financial statements for the period ending June 30, 2015 for Sierra Telephone (Exhibit A) and for Sierra Telephone Long Distance (Exhibit B), demonstrate that the applicants have remained financially viable after the transfer of control. According to the financial statement, the companies' gross annual California revenues are less than \$500 million. Therefore, the transfer of control is not subject to Sections 854(b) and (c).

In addition, although D.13-05-035 implemented new bond requirements for existing CPCN holders after the companies were issued their CPCNs, Sierra Telephone Company, Inc. is a General Rate Case Incumbent Local Exchange Carrier of Last Resort, and exempt under D.13-05-035 from posting a performance bond.<sup>8</sup>

Therefore, we find that both companies continue to have adequate resources to operate, and that they continue to demonstrate compliance with the requirements placed upon existing CPCN holders.

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<sup>6</sup> Decision (D.) 95-12-056 at Appendix C, Rule 4.A.

<sup>7</sup> Application at 2.

<sup>8</sup> D.13-05-035, Ordering Paragraph 5.

**3.3. Failure to Seek Prior Commission Approval**

The application states that prior Commission authorization for the transfer of control was not obtained. Applicants argue that the circumstances present in this case excuse the failure to seek prior approval of the transfer of control from the Commission.<sup>9</sup> In support of their position, applicants cite several cases in which the Commission approved involuntary transfers of control of closely held companies following the owner's death.<sup>10</sup>

The applicants are correct that the provisions of Section 854 cannot literally be applied to a transfer that occurs as the result of the death of an owner. For this reason, as applicant notes, the Commission has stated that, in cases of testamentary transfers of control pertaining to closely held telephone utilities, absent evidence that any given devolution results in or creates a situation inconsistent with or adverse to the public interest, our role should be a ministerial one in passing to and affording the beneficiary substantially the same rights and privileges transfer as were held by the predecessor.<sup>11</sup>

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<sup>9</sup> Application at 2.

<sup>10</sup> See D.00-10-016 Application of Steven R. Bryan and Bryan Family, Inc. pursuant to Public Utilities Code Section 854 for authority to acquire control of Pinnacles Telephone Co. (U1013); D.13-10-11 Application by Ducor Telephone Company (U1007C) and Mr. Galen D. Norsworthy for Approval of the Involuntary Transfer of Control of Ducor Telephone Company to Mr. Galen D. Norsworthy; D.02-09-009 Application for Approval of the Involuntary Transfer of Control of Foresthill Telephone Co. (U1009C) to Rose A. Hoeper.

<sup>11</sup> See D.02-09-009 at 3, citing Application of Steven R. Bryan, D.00-10-016. The Legislature amended Section 853 of the Code to provide that the provisions of Section 854 would not apply to the transfer of ownership of a small water company from a decedent to a member of the decedent's family under the Probate Code or by will, trust, or other instrument, after this Commission approved a testamentary transfer of a small water company in Application of Bianca Gambi (1981), 7 CPUC2d 52.

This said, the transfer from Mr. Harry Baker to Mr. John Baker in this proceeding was not truly an “involuntary” transfer, as it did not occur after death. The transfer occurred inter vivos,<sup>12</sup> on January 12, 2015, several weeks before the death of Harry Baker on April 3, 2015. This contrasts with the cases referenced by the applicants in which the transfer of control occurred by operation of law, under the terms of a will or trust, following death.

The application does not provide any explanation about why the request to this Commission for authorization to transfer was delayed from April 2015 to December 2015. For instance, the application explains that, after the death of Harry Baker on April 3, 2015, the trustee provided notice on or about May 5, 2015 to heirs of Harry H. Baker and beneficiaries of the 1975 and 2003 Trusts as required under the California Probate Code.<sup>13</sup> If we assume that health related exigencies existed that prevented filing the application for transfer authorization prior to Mr. Harry Baker’s death, it appears that these exigencies had resolved, and did not impede completion of probate related administrative requirements within a few weeks after Mr. Baker’s death. It is reasonable to believe then, that this application also could have been prepared and filed with the Commission within, at latest, a few weeks after Mr. Baker’s death.

#### **4. Imposition of Section 2107 Penalty**

Applicants not only failed to comply with § 854(a), but also waited several months after the transfer occurred before filing this application to request

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<sup>12</sup> An inter vivos transfer is one that occurs during one’s lifetime as opposed to a testamentary transfer that takes effect on death.

<sup>13</sup> See Application at 3. The application explains that the required 120 day period for contestation or objection under the Probate Code expired on or about September 2, 2015. This means that notices required under the Probate Code were given on or about May 5, 2015.

Commission authorization. Therefore, it is appropriate to impose a fine under § 2107. D.98-12-075 sets forth the criteria to be considered when imposing a fine upon a utility.<sup>14</sup>

#### **4.1. Severity of the Offense**

The size of a fine should be proportionate to the severity of the offense, based on the level of physical harm, economic harm, harm to the regulatory process, and the number and scope of violations.<sup>15</sup> It is also appropriate to consider the size of the utility and its experience before the Commission. Applicants' violation of § 854(a) did not result in physical or economic harm to its customers, or to consumers generally. However, applicants have been appearing before the Commission for several years and certainly understand that compliance is absolutely necessary to the proper functioning of the regulatory process. We impose a fine here to express disapproval of applicants' initial failure to seek prior authorization, and particularly, the time lapse between the transfer date and the date of this application.

#### **4.2. Conduct of the Utility**

When contemplating a fine, the Commission will consider the conduct of the utility, i.e., the Commission will consider the utility's actions to prevent a violation, its actions to detect a violation and its actions to rectify a violation.<sup>16</sup> The application states that "prior Commission authorization for the transfer of control resulting from John Baker's succession to sole trustee" for the 1975 and

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<sup>14</sup> See D.98-12-075, 1998 Cal. PUC LEXIS 1016.

<sup>15</sup> *Id* at \*71 - \*73.

<sup>16</sup> *Id*.



2003 trusts was not obtained,<sup>17</sup> but does not explain why. The application presumes that the transfer is “involuntary” and cites to several cases. However, there is no discussion in the application about Mr. Harry Baker’s particular circumstances which permit analysis of why applicants believe that an inter vivos transfer, such as occurred here, must be considered “involuntary.” Accordingly, we impose this penalty to encourage future applicants to employ very careful analysis before assuming that they may disregard, or fail to comply with, provisions of future orders, decisions, rulings, or requirements of this Commission.

#### **4.3. Totality of Circumstances**

The fine should be tailored to the unique facts of each case. The Commission will take into account facts that mitigate the degree of wrongdoing, when viewed from the perspective of the public interest. As previously noted, it is fortunate that, in this case, the applicants’ failure to seek prior authorization does not result in physical or economic harm to Sierra Telephone or Sierra Long Distance customers, and the amount of fine imposed will reflect this.

#### **4.4. Financial Resources of the Utility**

The fine should reflect the financial resources of the utility, and should be set at a level that deters future violations, without becoming excessive, based on each utility’s financial resources.<sup>18</sup>

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<sup>17</sup> Application at 2.

<sup>18</sup> D.98-12-075, 1998 Cal. PUC LEXIS 1016 at 75-76.

**4.5. Amount of Fine under Section 2107**

After consideration of the totality of the circumstances, and because the failure to seek prior authorization for the transfer of control does not present any apparent harm or detriment to customers of the applicants, we impose the minimum \$500 fine permitted under § 2107. We impose this fine with the objective of encouraging future compliance with Commission requirements.

**5. Subsequent Transfer of Control of Stock from Trusts to John H. Baker Individually**

In this application, the applicants also request authority for a “potential future acquisition of control of the Sierra Utilities by John Baker, individually, which would occur, if at all, upon distribution of the STCG voting stock currently held by John Baker as trustee of the 2003 Harry H. Baker Revocable Trust, to John Baker individually (or as trustee of his inter vivos trust).”<sup>19</sup> The applicants represent that, following distribution of notices required under the California Probate Code, there was no contestation or objection filed with respect to the STCG voting stock by heirs of Harry H. Baker and beneficiaries of the 1975 and 2003 Trusts.<sup>20</sup>

Notwithstanding the uncontested probate proceeding, any subsequent transfer of control must be reviewed and authorized by the Commission under Section 854.

The application does not provide sufficient information to permit the Commission an opportunity to consider whether the transfer of the trust assets to Mr. Baker individually is consistent with, and promotes the public interest.

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<sup>19</sup> Application at 2-3.

<sup>20</sup> *Id.*

Moreover, as worded, the application is uncertain that the transfer will ever occur at all. The Commission thus has nothing definite to act upon at this time.

An application for authorization to proceed with the subsequent transfer must be filed with the Commission before the transfer occurs, and must contain sufficient detail about the proposed transfer of assets, timing of transaction, and supporting documents describing the transfer.

## **6. California Environmental Quality Act (CEQA) Compliance**

The application proposes no new construction and thus, there is no possibility that the transaction will have a significant adverse impact on the environment. The proposed transaction does not constitute a “project” under CEQA, California Public Resources Code, Section 21000 et seq.

## **7. Conclusion**

The requested retroactive approval of the inter vivos transfer of control from trustee Harry Baker to John Baker as trustee serves the public interest and presents no detrimental impact upon either company’s CPCN. However, because the application does not provide any reason why the applicants could not have requested prior authorization for the transfer of control, as required under Section 854(a), imposition of a fine is appropriate under Section 2107. The application also does not provide sufficient information to permit the Commission an opportunity to consider whether the transfer of the trust assets to Mr. Baker individually is consistent with, and promotes the public interest. For this reason, the request for authorization of a subsequent transfer of control is denied. The Commission will accept an application for prior authorization of the subsequent transfer should the parties actually decide to proceed with it.

**8. Categorization and Need for Hearing**

In Resolution ALJ 176-3370 dated January 14, 2016, the Commission preliminary determined that this is a ratesetting proceedings and that hearings would not be necessary. The application appeared on the Commission's Daily Calendar on December 30, 2015. No protests were received. A public hearing is not necessary.

**9. Comments on Proposed Decision**

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening comments were filed on April 18, 2016 by Sierra Telephone Company, Inc., Sierra Telephone Long Distance and Mr. John H. Baker who agreed with the proposed decision.

**10. Assignment of Proceeding**

Liane M. Randolph is the assigned Commissioner and Patricia B. Miles is the assigned ALJ in this proceeding.

**Findings of Fact**

1. Sierra Telephone Company, Inc. and Sierra Telephone Long Distance are wholly owned subsidiaries of Sierra Tel Communications Group (STCG), the voting stock of which was held in three trusts – the Harry H. Baker, Jr. 1975 Trust (49%) and the Harry H. Baker 2003 Revocable Trust (49%) - whose trustee was Harry H. Baker, and the John H. Baker 1999 Revocable Inter Vivos Trust (2%).

2. On January 12, 2015, Harry H. Baker resigned as trustee of the two trusts bearing his name, and named John H. Baker as successor trustee.

3. Pub. Util. Code § 854(a) requires the Commission's prior approval for any transfer of control of a controlling interest in any public utility subject to its jurisdiction.

4. Harry H. Baker died on April 3, 2015.

5. Sierra Telephone Company, Inc., Sierra Telephone Long Distance and John H. Baker (Applicants) filed this application on December 23, 2015 to request that the Commission grant retroactive authorization for John Baker's appointment as the successor trustee of the two Harry H. Baker trusts.

6. In their December 23, 2015 application, applicants also request that the Commission grant authority for them to (at an unspecified future date) to transfer control of the stock held by the two trusts to John Baker individually.

7. John Baker has significant management experience within the telecommunications field, and will continue to be responsible for the day-to-day management of Sierra Telephone Company, Inc. and Sierra Telephone Long Distance.

8. The transfer of control to John Baker as trustee does not involve any financial transaction or transfer of stock from the trusts.

9. Sierra Telephone Company and its affiliate Sierra Telephone Long Distance are exempt from posting a performance bond under D.13-05-035.

10. The public interest will be served by approval of the request for retroactive authorization of the transfer of control.

11. The failure to seek prior authorization for the transfer of control meets criteria for imposition of a fine under Pub. Util. Code § 2107.

12. There are not sufficient facts in the December 23, 2015 application to grant prospective approval for a subsequent transfer of control from the trusts to John Baker, individually.

**Conclusions of Law**

1. The inter vivos transfer of control of the trusts from Harry Baker to John Baker as successor trustee was not an “involuntary” transfer of control.
2. Retroactive approval for the transfer of control of the trusts to John Baker as successor trustee is in the public interest and should be granted.
3. The applicants and Harry Baker (now deceased) violated Pub. Util Code § 854(a) by failing to seek prior authorization from the Commission before naming John Baker successor trustee of the trusts which held a controlling interest in the assets of Sierra Telephone Company, Inc. and Sierra Telephone Long Distance, which are utilities subject to the jurisdiction of the Commission.
4. Pub. Util. Code Code § 2107 requires the Commission to impose a penalty for the violation of § 854(a) and the penalty of \$500.00 meets the criteria under D.98-12-075 for imposition of a penalty.
5. The Commission may not grant prospective approval for a subsequent transfer of control from the trusts to John Baker until the applicants file an application setting forth sufficient detail and specificity to permit the Commission to evaluate such a transfer.
6. This proceeding should be closed.

**O R D E R****IT IS ORDERED** that:

1. The January 12, 2015 transfer of control of the trusts holding controlling interests in Sierra Telephone Company, Inc. (U1016C) and Sierra Telephone Long Distance Company (U5657C) from Harry Baker to John Baker is retroactively approved.

2. Sierra Telephone Company, Inc. Sierra Telephone Long Distance and John Baker, the joint applicants, must submit a fine of \$500 by check or money order payable to the California Public Utilities Commission, and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, San Francisco, CA 94102, within 30 days of the effective date of this order. Write on the face of the check or money order "For deposit to the General Fund per Decision \_\_\_\_\_."

3. Application 15-12-017 is closed.

This order is effective today.

Dated \_\_\_\_\_, at Sacramento, California.